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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,755	09/12/2003	Jeong J. Ma	MOT-CS22547RL	8148
35813	7590	01/28/2005		
DESIGN IP-DEPT. MOT 5000 W. TILGHMAN STREET SUITE 153 ALLENTOWN, PA 18104			EXAMINER	CHIANG, JACK
			ART UNIT	PAPER NUMBER
			2642	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/661,755	MA, JEONG J.	
	Examiner	Art Unit	
	Jack Chiang	2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

CLAIMS

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 4-7, 10-16, 19, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bodley et al. (US 2002/0021800).

Regarding claim 1, Bodley shows:

An ear mount (6);

A communication base unit (1-2);

A hinge unit (3-5, 23) that pivotally connects the communication base unit (1-2) to the ear mount (6) and allows the ear mount to be rotated between an open position (figs. 3, 7, 9) and a closed position (fig. 10);

A sensor (102) that activates the communication base unit when the ear mount is rotated into the open position (figs. 3, 7, 9) and deactivates the communication base unit when the ear mount is rotated into the closed position (fig. 10).

Regarding claim 11, Bodley shows:

An ear mount (6);

A base housing (1-2);

A circuit carried on the housing (1-2) and including at least one of a transmitter and a receiver (19, behind 8);

A hinge unit (3-5, 23) that pivotally connects the communication base unit (1-2) to the ear mount (6) and allows the ear mount to be rotated between an open position (figs. 3, 7, 9) and a closed position (fig. 10);

A switch (102) carried in the base housing (1-2), the switch responsive to the open and closed positions (figs. 9-10) of the ear mount (6), the switch (102) automatically controlling the activation and deactivation of the circuit (i.e. 19), the circuit (i.e. 19) automatically responsive to the ear mount being in the open position (fig. 9) to power on the circuit and in the closed position (fig. 10) to at least temporarily power down the circuit.

Regarding claim 21, Bodley shows:

An ear mount (6);

A base (1-2) carrying a circuit (inside 1-2, i.e. 19) for short range communication with a device (cell phone);

A switch (102);

The steps of:

Turning the circuit off in response to the ear mount moving to a closed position (fig. 10);

Turning the circuit on when the ear mount moves to an open position with a portion of the ear mount spaced from the base (fig. 9).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20, 3, 8-9, 17-18, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodley.

Regarding claim 20, 3, 8-9, 17-18, 22-23, Bodley shows:

An ear mount (6);

A communication base unit (1-2) having an earphone (behind 8) and a microphone (19);

A hinge unit (3-5, 23) that pivotally connects the communication base unit (1-2) to the ear mount (6) and allows the ear mount to be rotated between an open position (figs. 3, 7, 9) and a closed position (fig. 10), a hinge spring and a hinge spring socket (see spring and socket in fig. 21), and a plunger (i.e. 204);

A detent mechanism (see 144,146, 148, 150) which holds the ear mount (6) between at least 20°-40° away from the base (1-2) (see fig. 7);

A detent mechanism (see 144, 146, 148, 150) comprising first and second plungers having complimentary v-shaped contours (see 144-146, 148-150);

A switch (102) that activates the communication base unit when the ear mount is rotated into the open position (figs. 3, 7, 9) and deactivates the communication base

unit when the ear mount is rotated into the closed position (fig. 10), and a detect pin (see pin in 102).

Bodley differs from the claimed invention in that the hinge spring and its socket are fixed in the base instead of the ear mount, therefore, the detect pin is not contacted the ear mount.

However, in Bodley, the ear mount (6) is rotatably (23, 3-5) mounted on the base unit (1-2). The majority parts of the hinge unit (i.e. 3-5) are housed in the base unit. In hinge design, it is common that the hinge parts can be shifted from one hinged part to another hinged part, and it would not affect the hinging operation because it is simply shifting the parts from one location to another.

Therefore, it would have been obvious for one of ordinary skill in the art to shift the hinge parts to the ear mount, in doing so, the ear mount would contact the detect pin because it is a part of the hinge. This variation can be considered as shifting location of parts and therefore would have been obvious for one of ordinary skill in the art, and in this case, it is shifting the hinge parts from the base unit to the ear mount, see *In re Japikse* 86, USPQ 70, CCPA 1950.

Regarding claims 2, 4-7, 9-10, 12-16, 18-19, Bodley shows:

The communication base unit (1-2) having an earphone (behind 8) and a microphone (19);

The sensor/switch and a detect pin (see area of 102 in fig. 26);

A detent mechanism (see 144, 146, 148, 150) which holds the ear mount (6) between at least 20°-40° away from the base (1-2) (see fig. 7);

The detent mechanism (see 144, 146, 148, 150) comprising an elastomeric plunger located in a first bore having a female and male v-shaped contours (see 144-146, 148-150), and second plunger in a second bore (with 124 in fig. 13).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jack Chiang
Primary Examiner
Art Unit 2642